

**OCT 03 2005**Harris v. City of Seattle, No. 04-35148**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

Kleinfeld, J. concurring:

I concur in the majority's determination that the claims presented in this case are without merit. But I would further find that these claims are frivolous and abusive and that the appellant should be sanctioned. Allowing a public official to pursue frivolous claims against investigators and the media with impunity will deter valuable investigation of government officials by imposing excessive litigation costs on investigating parties. The way to avoid such a dangerous abuse is to award double costs<sup>1</sup> and attorney's fees<sup>2</sup> for bringing such frivolous suits. I would do so in this case.

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<sup>1</sup>28 U.S.C. § 1912 ("Where a judgment is affirmed by the Supreme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs.").

<sup>2</sup>Federal Election Commission v. Toledano, 317 F.3d 939, 953-54 (9th Cir. 2003)(granting attorney's fees even though the appellee had not requested them, "as a sanction for his bad-faith conduct and abuse of the judicial process.").